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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/037,431

10/29/2001

Joseph William Tuomikoski

21452-00002

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05/28/2004

FOSTER, SWIFT, COLLINS & SMITH, P.C.
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EXAMINER

NGUYEN, DINH Q

ART UNIT

PAPER NUMBER

3752

DATE MAILED: 05/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,431

Applicant(s)

TUOMIKOSKI ET AL

Examiner

Dinh Q Nguyen

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21,22 and 24 is/are allowed.
- 6) ☒ Claim(s) 1-7,9-12,14,16 and 23 is/are rejected.
- 7) ☒ Claim(s) 8,13 and 15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9-12, 14, 16, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brillaud et al. in view of Cathey et al.

The statement of intended use carries no patentable weight.

Brillaud discloses a scent dispenser comprising two hemispherical body members 11 and 12, an interior in each of the first and second hemispherical body members, a first and second outer peripheries, a planar first and second flanges 20, 21 (figures 3 and 5), a releasable means 26/27/28 couple to the second hemispherical body members. Brillaud does not teach airtight seals in the two hemispherical body members. However, Cathey discloses two hemispherical body members 12 and 13, a means 40 along the first outer periphery 18' to form an airtight seal against the second body 12, and a means 43 along the second outer periphery 16' to form an airtight seal against the first body 13. Furthermore, Cathey discloses an O-ring 61 with an annular groove 59 in the hemispherical body 13, and the O-ring 61 is located in a groove in the hemispherical body 12 (figure 8, column 3, lines 33-40). Therefore, it would have been obvious to one having ordinary skill in the art to have provided the device of Brillaud with airtight seals as suggested by Cathey. Doing so would provide a way to prevent leaking of scent material.

With respect to claims 3-7, 9-12, and 16, Cathey discloses the first hemispherical body member 13 of transparent plastic and the second hemispherical body member with opaque material, thus to have different colors or materials or sizes for the bodies would have been an obvious matter of design choice to a person of ordinary skill in the art to configure the device of Cathey with different colors or materials or sizes, because one of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either colors or materials or sizes.

Allowable Subject Matter

3. Claims 21, 22, and 24 are allowed.
4. Claims 8, 13, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments filed March 12, 2004 have been fully considered but they are not persuasive. In further review of figure 8 and column 3, lines 33-40 of the Cathey's patent, the Examiner respectfully withdraws the allowable subject matter of claim 14 as indicated in the Office Action dated December 18, 2003. The Brillaud device is a scent dispenser but is capable of dispensing scent for luring animals. It is noted that the feature upon which applicant relies (i.e., lure) is not recited in the body of the claim. Furthermore, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention

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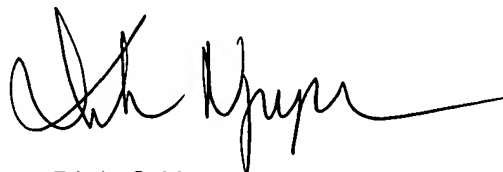
from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claims. The device of Brillaud is capable of dispensing scent for luring.

6. Applicant's arguments with respect to claims 1-7, 9-12, 14, 16, and 23 have been considered but are moot in view of the new ground(s) of rejection.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinh Q Nguyen whose telephone number is 703-305-0248. The examiner can normally be reached on Mon-Fri 6:30-4:00 alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on 703-308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dinh Q Nguyen
Primary Examiner
Art Unit 3752

dqn